IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

MFA.No. 624 of 1999(A)

OPMV.691/1990 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ATTINGAL
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APPELLANT - 8TH RESPONDENT:

A. ARIFA BEEVI, LAILA VILAS,
THATTUTHUMALA P.O.

BY ADV. SRI.V.GIRI

RESPONDENTS - APPELLANT - RESPONDENTS - ADDL. RESPONDENTS
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1. **SREEDHARAN PILLAI RAJESHKUMAR, MINOR 8 YEARS, REPRESENTED BY HIS GUARDIAN AND MOTHER DEVAKI AMMA LALITHAMMA, PACHAYIL PUTHEN VEEDU, VAYYATTINKARA, ADAYAMOM DESOM, PAZHAYAKUNNAMMEL VILLAGE, KILIMNAOOR.**

2. **SUSBHASHITHAN SUDARSANAN, MELATHETTIKUZHI VEEDU, ALTHARAMOODU, NAGAROOR VILLAGE.**

3. **ABDULVAHID ABDUL RASHEED, CHARUVILA VEEDU, KALAPPURA ADAYAMOM DESOM, PAZHAYAKUNNAMMEL VILLAGE, KILIMNAOOR.**

4. **THE DIVISIOINAL MANAGER, NEW INDIA ASSURANCE COMPANY LIMITED, THIRUVANANTHAPURAM.**

5. **SMT. SULAIKA BEEVI, W/O. ABDUL RASHEED, SUNITHA MANZIL, KAKKODU, MADAVOOR, KILIMANOOR.**

6. **NAVAS, S/O. ABDUL RASHEED OF DO. DO.**

7. **ABDUL VAHEED, KUNNIL VEEDU, KALAPPURA ADAYAMOM, PAZHAYAKUNNAMMEL, KILIMANOOR.**

8. **SMT. ISHA BEEVI, DO. DO.**

BY ADV. SRI.A.C.DEVY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 624 OF 1999

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Dated this the 27th day of June, 2007

J U D G M E N T

Additional 8th respondent in O.P(MV) No.691 of 1991 on the file the Motor Accidents Claims Tribunal, Attingal, is the appellant in this appeal.

2. First respondent filed the Original Petition claiming compensation alleging that he sustained injuries in a motor vehicle accident which took place at 9.15 a.m. on 18.2.1987. On the date of filing of the petition, first respondent was a minor aged 7 years. He was represented by his mother as next friend. It was alleged that the boy was knocked down by a Car bearing Reg.No.KET-6677 and sustained injuries. Originally, the case was numbered as O.P(MV) No.1184 of 1988 before MACT, Thiruvananthapuram and transferred to MACT, Attingal and renumbered as O.P(MV) No.691 of 1990. Respondents 1 and 2 in the O.P., who were impleaded as owner and driver, did not appear and contest. Insurer alone contested the case. The Insurer filed a written statement denying its liability. Tribunal passed an award holding that

the petitioner is entitled to a compensation of Rs.95,800/-. It was also found that the owner and driver of the Car are liable to pay the compensation. Subsequently owner and driver filed a petition to review the award passed by the Tribunal. Tribunal reviewed the award and fastened the liability on the Insurer. Aggrieved by the said award, Insurer filed M.F.A No.642 of 1993 before this Court. In the meanwhile second respondent who was owner of the vehicle died. His widow and children were impleaded as additional respondents in the M.F.A. While arguing that case, counsel for the Insurer contended that the policy produced stands in the name of the appellant herein. So this Court set aside the award and remanded the matter with a direction to the Tribunal to determine the question of liability. Both sides were given opportunity to adduce evidence. This Court also directed the Tribunal to implead the appellant herein, Smt. Arifa Beevi in the proceedings. After remand Smt. Arifa Beevi was impleaded and the Tribunal passed an award directing Arifa Beevi to pay the amount awarded by the Tribunal in excess of Rs.50,000/-, which was fixed as the liability of the Insurer. Challenging that award, this appeal is filed.

3. Learned counsel appearing for the appellant has argued that the appellant transferred the vehicle on 20.11.1995 to one Mr.Anil Kumar and she was not the owner of the vehicle on the date of the accident. It is argued that the petitioner in the O.P. filed a petition for impleading the appellant and the Tribunal by order dated 26.11.1998 allowed the petition for impleading and thereafter only issued notice to the appellant. Appellant appeared and filed objection in the impleading petition. No written statement was filed. By order dated 20.1.1999 the Tribunal treated the objection filed to the impleading petition as written statement and closed the evidence and posted the case for disposal.

4. A perusal of the records show that no reasonable opportunity was afforded to the appellant to file written statement to the claim raised or adduce evidence. Counsel for the appellant argued that the appellant was not given an opportunity to adduce further evidence to show that the vehicle was actually transferred to one Mr.Anil Kumar. It is also argued that respondents 1 and 2 in the O.P. were impleaded as owner and driver, but they did not appear and contest the case. So they were set ex parte. They did not

file any petition to set aside the ex parte order. It is further argued that after remand by this Court, legal representatives of the second respondent, who was set ex parte, raised a contention that their predecessor-in-interest was not the owner of the vehicle. It is argued that in view of the failure on the part of the original second respondent to appear and deny his liability, the legal heirs of the second respondent were precluded from raising such a contention. The legal representatives of the deceased second respondent in the O.P. were impleaded as additional respondents in the appeal.

5. It is seen that the Tribunal did not give any reasonable time to the appellant to file written statement. The appellant received notice of O.P. and appeared before the Tribunal on 5.1.1999. The case was adjourned for evidence to 20.1.1999 without posting the same for filing the objection of the appellant. On that day the Tribunal treated the objection filed by the appellant as written statement on the ground that her impleadment was already done as per the direction of this Court. No oral evidence was adduced. Exhibits B1 to B5 were marked and arguments were heard and the O.P. was taken up for disposal. The Tribunal shut out evidence on the ground

that this Court directed it to dispose of the case within 3 months from 10.9.1998.

6. This Court directed the Tribunal to dispose of the O.P. within 3 months from 10.9.1998, the date of judgment in M.F.A.No.642 of 1993. The perusal of the records shows that after the disposal of the MFA by this Court, the case was posted on 10.11.1998. The case was adjourned to 24.11.1998 and then to 26.11.1998. On that day the petitioner filed I.A.No.2310 of 1998 for impleading the appellant. The Tribunal allowed that application and ordered notice. The appellant was served after 23.12.1998 and appeared on 5.1.1999. The evidence was closed on 20.1.1999 and award was passed on 5.2.1999. So it is clear that the Tribunal did not give any opportunity to the additional 8th respondent in the O.P., appellant herein, to file written statement and adduce evidence. So the award passed is unsustainable and liable to be set aside.

7. So, I have no other option, but to set aside the impugned award and remand the case again for fresh consideration. It was brought to my notice that the Insurer has cleared its liability by paying Rs.50,000/-.

8. In the result, the appeal is allowed. The impugned award is set aside for the limited purpose of determining the liability of the owner alone. The Tribunal is directed to take O.P(MV) No.691 of 1990 back to file and dispose of the same afresh in accordance with law in regard to the question of liability of the owner.

Parties shall appear before the Tribunal on 6.8.2007. It is made clear that it is open to the parties to adduce further evidence, if so advised.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A.NO. 624 OF 1999

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J U D G M E N T

27TH JUNE, 2007